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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/652,818	08/29/2003	Brian Puckett	191.01.02-P-USA	8067
30040	7590	10/01/2004	EXAMINER	
MICHAEL A. SHIPPEY, PH. D. 4848 LAKEVIEW AVENUE SUITE B YORBA LINDA, CA 92886			TSO, LAURA K	
		ART UNIT	PAPER NUMBER	2875

DATE MAILED: 10/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/652,818	PUCKETT, BRIAN
	<b>Examiner</b>	<b>Art Unit</b>
	laura tso	2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 1-13,15 and 16 is/are rejected.  
 7) Claim(s) 14,17 and 18 is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 29 August 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

U.S. Patent number 5,656,565 has not been considered as it has been withdrawn from consideration and cannot be viewed by the examiner.

### ***Specification***

The disclosure should be carefully reviewed to ensure that any and all grammatical, idiomatic, and spelling or other minor errors are corrected.

### ***Claim Objections***

Claim 17 is objected to because of the following informality: The circular outer surface [line 3] has no antecedent basis. Appropriate correction is required.

Claim 18 is objected to because of the following informality: The word "optionally" is indefinite as it is unclear if the element is to be included in the claims.. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1, 3-5, 7-9 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Wisenbaker (3,835,272).

Wisenbaker discloses a flashlight comprising a head [2] containing a bulb assembly [note reflector 10] a barrel [1] containing three batteries [29], a switch [15] in the tail cap [17] wherein the head and tailcap are at least 25% larger in diameter than the barrel. [Note the tail cap was measured at its middle or average diameter]. The tail cap and end of the head are flat [figure 1] and it would be possible to balance the flashlight on either end. The barrel is knurled [6: column 3, line 50]. Inherently the barrel is sufficient for a person to grasp. The barrel is made of aluminum {column 3, line 37+].

Claims 1, 3, 4, 8 and 11-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Frick (6,467,930).

Frick discloses a waterproof flashlight comprising a head [2] containing a bulb [32] a barrel [3] containing batteries [29], a switch [10], and a tail cap [5] wherein the head and tail cap are at least 25% larger in diameter than the barrel. The tail cap and end of the head are flat [figure 2] and it would be possible to balance the flashlight on either end. Inherently the barrel is sufficient for a person to grasp. The device of Frick is water resistant to 100 meters [column 3, line 36]. Note ring 35 is metal.

Claims 1-4 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Abel (Des. 335,192).

Abel shows a flashlight comprising a head containing a bulb [figures 3 and 4] a barrel inherently containing the power supply [note there is no plug], two switches [figures 1, 2, 5 and 7], and a tail cap which also includes a bulb, wherein the head and tail cap are at least 25% larger in diameter than the barrel and are equal in diameter. The tail cap and end of the head are flat [figures 1 and 2] and it would be possible to balance the flashlight on either end. Inherently the barrel is sufficient for a person to grasp.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Abel, Frick or Wisenbaker in view of Murray et al. (5,345,370).

Abel, Frick and Wisenbaker do not disclose a non-slippery material covering the barrel. Such material is well known in the art and is inexpensive and aids in gripping the flashlight. Murray discloses, in a similar flashlight device, a gripping ring secured to the barrel to aide in holding the device [column 3, line 12+]. Thus, it would be obvious to one of ordinary skill in the art at the time the invention was made to use a non-slippery material to cover the barrel, such as the one taught by Murray, in the devices of Abel, Frick and Wisenbaker to aide in gripping the flashlights.

Claims 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wisenbaker.

Wisenbaker does not disclose the batteries comprise a rechargeable battery pack. Rechargeable battery packs are well known in the art, last longer and are better for the environment. Thus, it would be obvious tone of ordinary skill in the art at the time the invention was made to use a rechargeable battery pack in the device of Wisenbaker so that the battery would be longer lasting.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frick or Abel.

Frick and Abel do not disclose the batteries comprise a rechargeable battery pack. Rechargeable battery packs are well known in the art, last longer and are better for the environment. Thus, it would be obvious to one of ordinary skill in the art at the time the invention was made to use rechargeable battery packs in the devices of Frick and Abel so that the battery would be longer lasting.

Claim 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abel or Wisenbaker in view of Frick.

Abel and Wisenbaker do not disclose the flashlight is waterproof and rated for 30 meters immersion. Frick in a similar device discloses a flashlight which is waterproof and rated for 100 meters which allows it to be used in environments where it will or may get wet, such as on a boat. Thus, it would be obvious to one of ordinary skill in the art at the time the invention was made to make the flashlights of Abel and Wisenbaker waterproof and rated for 30 or more meters of immersion so that they can be used in environments where it will or may get wet, such as on a boat

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Abel, Frick or Wisenbaker in view of Matthews (5,642,932).

Abel, Frick and Wisenbaker do not disclose the bulb is an incandescent light bulb. Incandescent light bulbs are well known in the art and are inexpensive. Matthews

discloses, in a similar device, a flashlight using a incandescent light bulb [52]. Thus, it would be obvious to one of ordinary skill in the art at the time the invention was made to use an incandescent light bulb, such as the one taught by Matthews, in the devices of Abel, Frick and Wisenbaker because such bulb are well known readily available and inexpensive.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Abel, Frick or Wisenbaker in view of St. Claire (6,168,288).

Abel, Frick and Wisenbaker do not disclose the bulb assembly is a plurality of LEDs. LEDs are well known in the art and are inexpensive and are long lasting. St. Claire discloses, in a similar device, a flashlight using a plurality of LEDs [48]. Thus, it would be obvious tone of ordinary skill in the art at the time the invention was made to use a plurality of LEDs, such as the one taught by St. Claire, in the devices of Abel, Frick and Wisenbaker because such bulb are well known readily available and inexpensive.

#### ***Allowable Subject Matter***

Claims 14, 17 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

Prior art fails to show or suggest flashlight comprising a head containing a bulb/bulb assembly, a barrel containing batteries, a switch and a the tail cap wherein the head and tail cap are at least 25% larger in diameter than the barrel wherein the flashlight may be inserted into a holster with either end first entering and the retention not being substantially affected therefrom.

Prior art fails to show or suggest flashlight comprising a head containing a bulb/bulb assembly, a barrel containing batteries, a switch and a the tail cap wherein the head and tail cap are at least 25% larger in diameter than the barrel and a lanyard having one end fit snuggly around the outer surface of the barrel and the other end comprising a loop/tunnel through which a rope passes, the rope being knotted or connected together in at least one location.

Prior art fails to show or suggest a holster for a flashlight comprising a head containing a bulb/bulb assembly, a barrel containing batteries, a switch and a the tail cap wherein the head and tail cap are at least 25% larger in diameter than the barrel wherein the holster comprises a flat surface forming one side of a U-shaped clip, a hemispherical enclosure connected to the flat wall, and ribs or bands within the enclosure.

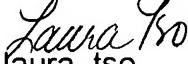
### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note Matthews (5,593,074).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to laura tso whose telephone number is 571-272-2385. The examiner can normally be reached on M-F 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, sandra o'shea can be reached on 571-272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
laura tso  
Primary Examiner  
Art Unit 2875